

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT
N.Y.

★ MAR 17, 2008 (B&W)

TIME A.M. 8

MEMORANDUM AND ORDER

04-CV-2186 (ENV) (RLM)

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Cicero Service Station, Inc., :
Plaintiff, :
-against- :
Sunoco, Inc. (R&M), :
Defendant. :
-----X

VITALIANO, D.J.

The Court is in receipt of a motion, dated February 22, 2008, purportedly brought pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, noticed by Nicholas Cicero, Sr.¹ Cicero requests that the Court vacate its Order of April 11, 2007, which dismissed this action in accordance with a settlement entered into by the parties (the "April 11, 2007 Order"), on the grounds that defendant Sunoco, Inc. and plaintiff's counsel perpetrated a fraud on the Court.

As an initial matter, Cicero is not a party to this action, (See Order of 10/16/2006; Order of 10/24/2006; Memorandum and Order of 1/8/2007), and, therefore, lacks standing to object to the terms of the settlement of this action. During the course of this litigation Cicero has, on multiple occasions, expressed his dissatisfaction with plaintiff's counsel and objected to certain aspects of the litigation strategy. At each turn Magistrate Judge Mann has ruled that Cicero is a nonparty and that his letters and objections would not be considered by the court. (See Order of 10/16/2006; Order of 10/24/2006; Memorandum and Order of 1/8/2007.) Cicero did not file in this Court any objection to Judge Mann's orders, and the time to

¹ Cicero mailed to the Court a Notice of Motion, Affidavit/Affirmation, a 12-page memorandum with 15 exhibits, and an Affirmation of Service.

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do so has long passed. See Fed. R. Civ. P. 72(a) ("Within 10 days after being served with a copy of the magistrate judge's order, a party may serve and file objections to the order."). Moreover, although, Cicero's lack of standing is a total bar to his motion for reconsideration, any request for reconsideration of the Court's April 11, 2007 Order should have been filed within 10 days of the order. See Local Civ. R. 6.3 ("A notice of motion for reconsideration or reargument . . . shall be served within ten (10) days after *the entry* of the court's determination of the original motion."). Cicero's motion, therefore, is also untimely in addition to being substantively wanting.

For all the foregoing reasons, the motion is denied.

SO ORDERED.

Dated: Brooklyn, New York
March 7, 2008



ERIC N. VITALIANO
United States District Judge